United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

74-2260

In The

United States Court of Appeals

For The Second Circuit

NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC., et. al.,

Plaintiff–Appellees.

THE REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK, et. al.,

Defendants–Appellees.

PHARMACEUTICAL SOCIETY OF THE STATE OF NEW YORK, INC., MOE GARTNER, LAWRENCE BLANK & VINCENT J. MORENO,

Applicants for Intervention–Appellants.

BRIEF FOR PLAINTIFF–APPELLEES

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UNITED STATE COURT OF APPEALS

FOR THE SECOND CIRCUIT

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NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC., et. al.,

Plaintiff-Appellees,

vs.

THE REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK, et. al.,

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PHARMACEUTICAL SOCIETY OF THE STATE OF NEW YORK, INC., et. al.,

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BRIEF FOR PLAINTIFF-APPELLEES

PRELIMINARY STATEMENT

The decision herein appealed from by the applicants for intervention was rendered by Judge Edmund Port of the Federal District Court, Northern District for New York. That decision is unreported.

STATEMENT OF THE ISSUES

I. Should appellants, individual pharmacists and a pharmaceutical association, be allowed to intervene as of right in an action brought by certain consumers against the Regents of the State of New York to enjoin enforcement of a Regents' regulation prohibiting the advertising of the price of prescription drugs?

II. Did the court below abuse its discretion in denying permission to intervene to the proposed intervenors?

STATEMENT OF THE CASE

a) The Nature of the Case

This is an action which challenges the constitutionality of 8 N.Y.C.R.R. § 63.3(c), a statewide regulation which prohibits the advertising of fixed fees or prices for professional services of pharmacists, those professional services being the preparing, compounding, preserving or dispensing of drugs, medicines, and therapeutic devices on the basis of prescriptions or other legal authority. The sole effect of this restriction is to prohibit the advertising of prescription drug prices. Section 6509 of the Education Law of the State of New York empowers the defendant Regents of the University of the State of New York to suspend, revoke or annul the license of any pharmacist who engages in activity contrary to its regulation. Plaintiffs contend that 8 N.Y.C.R.R. § 63.3(c) is unconstitutional because (1) it denies to plaintiffs and to others vital information in violation of the First Amendment, and New York could accomplish its legitimate objectives in protecting the health, safety and welfare of its citizens with laws which do not seriously infringe on the First Amendment; and (2) there is no rational relationship between the prohibition contained in 8 N.Y.C.R.R. § 63.3(c) and the health, safety and welfare of New York citizens, and thus the regulation violates the Due Process Clause of the Fourteenth Amendment.

Plaintiff New York Public Interest Research Group, Inc. (NYPIRG) is a non-profit, non-partisan research and advocacy organization

incorporated under the laws of the State of New York with a membership of approximately 60,000, many of whom are users of prescription drugs. Plaintiffs Pooler, Kramer and Ondrasik are residents of the State of New York and regularly purchase prescription drugs. Applicants for intervention are licensed pharmacists in the State of New York and a professional association of pharmacists in the state.

(b) The Course of the Proceedings

Plaintiffs filed their complaint on April 18, 1974. The defendants answer was served on May 13, 1974. Application for intervention was made on June 6, 1974.

On June 24, 1974, Judge Edmund Port denied the motion for intervention but ordered that all parties were required to serve copies of all pleadings, briefs and other legal documents in the action on the proposed intervenors as amicus curiae. An order was signed on July 31, 1974 and entered on August 8, 1974.

Notice of appeal from this order was filed August 27, 1974 on behalf of the proposed intervenors.

(c) Statement of Facts

The Regents of the University of the State of New York (hereinafter "Regents") have authority under New York Education Law §§6506(1) and 6509(9) to promulgate rules and regulations defining professional misconduct for pharmacists licensed by the State of New York. Such licenses, required by New York Education Law §§ 6801 and 6803, may be revoked by the Regents for professional misconduct. New York Education Law §6511.

Acting within its legal authority, the Regents promulgated regulations defining unprofessional conduct, including the section in dispute in the instant case (in relevant part):

> "Unprofessional conduct in the practice of pharmacy...shall include but shall not be limited to the following:
> (c) advertising of fixed fees or prices for professional services or the use of words 'cut rate', 'discount' or other words having a similar connotation or connection with the offering of professional services by a pharmacist,..."

8 N.Y.C.R.R. § 63.3(c).

The effect of this regulation is to prohibit the advertising of the price of prescription drugs in New York. The result of the advertising ban is that consumers are not able to determine the differences in the price of a prescription drug at various retail establishments. Consumers are suffering economic harm because they are not able to receive information as to where the lowest possible price exists, and therefore may purchase the same drug at a higher price. (It should be noted that economic harm is not an integral part of a cause of action to declare a regulation invalid on the basis of the First Amendment.)

The proposed intervenors generally assert that they have a professional and economic interest in this regulation that in-

fringes upon the consumers right to receive information under the First Amendment.

Plaintiffs also assert that 8 N.Y.C.R.R. § 63.3(c) is violative of the Due Process Clause of the Fourteenth Amendment. Substantive due process requires that there be a rational relationship between a state regulation and the health, safety and welfare of citizens of the state.

ARGUMENT

(a) Argument Concerning Intervention of Right

POINT 1

APPELLANTS DO NOT HAVE AN INTEREST SUFFICIENT TO ALLOW INTERVENTION OF RIGHT WITHIN THE MEANING OF FED. R. CIV. P. 24 (a) (2).

To satisfy the "interest" requirement embodied in Rule 24(a)(2), a proposed intervenor must meet two tests:

> Therefore it is necessary that the absent party specify in his application for intervention the exact nature of his interest, for if it is not so specified, or if, although specified, it is not the kind of interest protectable by the judiciary, intervention will be denied. Annotation: "Construction of Federal Civil Procedure Rule 24(a)(2), As Amended in 1966, Insofar as Dealing with Prerequisites of Intervention as a Matter of Right," 5 A.L.R. Fed. 518, 523. (footnotes omitted).

The tests can be simply stated as (1) defining "the interest" possessed by the proposed intervenors and (2) defining "interest" as used in Rule 24(a)(2).

"Interest" as used in Rule 24(a)(2) has been defined as a "direct, substantial, legally protectable interest in the proceedings." Diaz v. Southern Drilling Corp., 427 F.2d 1118, 1124, cert. denied 400 U.S. 878, rehearing denied 400 U.S. 1025 (1970), 3B Moore's Federal Practice ¶ 24.09-1(2) at 24-301. The United States Supreme Court in Donaldson v. United States, 400 U.S. 517 (1971), agreed with this definition when it spoke of Rule 24(a)(2): "What is obviously meant there is a significantly protectable interest." 400 U.S. at 531.

Arvida Corp. v. City of Boca Raton, 59 F.R.D. 316, 321 (S.D. Fla. 1972) is instructive as to the manner in which prior court pronouncements are given meaning. In that case, the proposed intervenor sought intervention in a suit challenging a city charter provision as unconstitutionally violative of the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The court used the standing test in Flast v. Cohen, 392 U.S. 83 , 102 (1968), to determine if the proposed intervenor had a significantly protectable interest. Also citing Linda R.S. v. Richard D., 410 U.S. 614 (1973), the court recognized that one who sought to invoke judicial power to protect "must be able to show...that he has sustained or is immediately in danger of sustaining some direct injury." 59 F.R.D. at 322 (emphasis in original). In summary, the test is injury in fact to a "cognizable, individualized interest." 59 F.R.D. at 322.

In terms of "the interest" possessed, appellants insist that because of both the factual background and judicial construction they are the intended beneficiaries of 8 N.Y.C.R.R. § 63.3(c).

Factually, appellants misunderstand the allegations in plaintiffs' complaint (Complaint, para. 12b at 3). They believe that because consumers are economically harmed, pharmacists, as an "obvious corollary", are economically advantaged. The alle-

gation that consumers are economically harmed stems from studies which demonstrate that a consumer has no readily available method of determining differences in the price of a particular prescription drug in various pharmacies, and therefore may unknowingly select a higher purchase price. It is not an "obvious corollary" that independent pharmacists are economic beneficiaries of this system.

Appellants rely on pronouncements in Urowsky v. Board of Regents, 76 Misc. 2d 187, 349 N.Y.S. 2d 600 (1973) as authority for construction of the statute. Such authority is questionable for several reasons. One, Urowsky is a decision of the lowest trial court of the State of New York and is currently being appealed to the Appellate Division, Third Department. (Plaintiffs have been informed by attorneys for the Regents that arguments will be heard during the week of November 18, 1974.) Two, the original advertising ban was an integral part of a comprehensive licensing scheme for pharmacists and other professions within the State of New York. While the legislature of the State did not specify an intent for passage of the statute, other states have construed such licensing statutes as relating to the public welfare. See: Annotation: "Validity of Statute or Ordinance Forbidding Pharmacist to Advertise Prices of Drugs or Medicines", 44 A.L.R. 3d 1301 at 1303. The rationale includes: protecting the public welfare by encouraging "monitoring" of drug use and protecting the public welfare by discouraging the purchase of

large quantities of drugs by pharmacists to take advantage of reduced rates.

Appellants cite several cases standing for the proposition that beneficiaries of legislation have a sufficient interest to justify intervention as of right in a suit to enjoin enforcement of the statute. Atlantic Refining Co. v. Standard Oil Co., 304 F.2d 387 (D.C. Cir. 1962), is instructive in defining the interest necessary to intervene as of right. A refiner sued the Secretary of the Interior to invalidate oil import regulations which would favor some refiners. The court held that although small refiners could intervene to assert defenses in addition to, but not inconsistent with, the Secretary of the Interior, Atlantic would not suffer a direct or immediate injury and therefore could not intervene as of right:

> "Adjudging § 10(b) to be invalid will neither increase nor decrease the allocation of crude oil to Atlantic and will result in no direct or immediate injury to Atlantic. True, it will give Standard and some of the other large integrated oil companies a potential, competitive advantage over Atlantic, but it is not certain they could or would use such advantage to injure Atlantic in the area served by Atlantic. 304 F.2d at 394 (emphasis added)."

Conceding for the moment, that 8 N.Y.C.R.R. § 63.3(c) was promulgated to competitively favor independent pharmacies, a judgment invalidating that regulation may give a "potential, competitive advantage" to some pharmacies, but there has been no showing that appellants, as was true with Atlantic Refining, would suffer "direct or immediate injury" at the hands of other pharmacies. The remain-

ing cases cited by appellants (Appellants' Brief at 14) agree with the position that direct injury must be imminent before intervention as of right is allowed.

Appellants' reliance on Norman's on the Waterfront, Inc. v. Wheatley, 444 F.2d 1011 (3d Cir. 1971), is perplexing since the facts of that case indicate that the proposed intervenors entered the case by consent of the other parties. The law in the case reaffirms the right of a successful intervenor, as a party, to appeal a decision.

Furthermore, appellants in their moving papers allege no more than a general economic and professional interest, similar to the general interest in Arvida Corp. v. City of Boca Raton, supra. There the proposed intervenor asserted an interest in the environment of the city. The court said:

> "Applicant's allegation that he will suffer injury if environmental damage occurs within the city may be entirely true; however, applicant has failed to allege the manner in which his interest in protecting the environment will be harmed or even affected by the questions in this lawsuit." 59 F.R.D. at 321.

The lesson from Atlantic Refining Co. v. Standard Oil Co., supra, is that even if 8 N.Y.C.R.R. § 63.3(c) was promulgated to protect independent pharmacists against the effects of competition, such an interest is not direct or immediate enough to mandate intervention under Rule 24(a)(2). Also, there is no showing by appellants that they, among all New York pharmacists, are the intended beneficiaries of the regulation. Arvida Corp. v. City of Boca Raton,

supra, makes it clear that an allegation such as "professional" interest is not sufficient as it does not demonstrate how such interest will be harmed or even affected by the questions in the lawsuit.

In conclusion, appellants fail to meet both tests, that they have an interest and that it is legally protectable in this lawsuit, and should therefore be denied intervention under Rule 24 (a)(2) for this reason alone.

POINT II

APPELLANTS DO NOT MEET THE REQUIREMENT THAT THEY ARE SO SITUATED THAT THE DISPOSITION OF THE ACTION MAY AS A PRACTICAL MATTER IMPAIR OR IMPEDE THEIR ABILITY TO PROTECT THEIR INTERESTS WITHIN THE MEANING OF RULE 24(a)(2).

Appellants have defined their interest as protection against potentially harmful competition. They also insist that intervention in the present action is the only manner in which this interest may be protected, yet they completely overlook the effects of numerous other state and federal laws and remedies to protect a businessman from unfair methods of competition. For example, 15 U.S.C. § 15 allows "any person injured in his business or property by reason of anything forbidden in the antitrust laws" to sue for damages in federal court without respect to amount in controversy. Certain unfair practices may also be enjoined by a private party. 15 U.S.C. § 26. All businesses are also protected by the Federal Trade Commission which has the authority to stop unfair methods of competition. 15 U.S.C. § 45.

Appellants here are not, therefore, attempting to protect an interest, i.e. to be free from unfair competition, but rather they are attempting to assert that interest in another forum. Claims of unfair competition can be asserted in other forums. Rule 24(a)(2) requires a practical impairment of an ability to protect an interest and not a practical impairment of the ability to assert an interest. TPI Corp. v. Merchandise Mart of South Carolina, Inc., 61 F.R.D. 684, 688 (D.S.C. 1974).

Appellants must also demonstrate that any interest they possess would be impaired by the rendering of 8 N.Y.C.R.R. § 63.3(c) unconstitutional. A mere naked allegation that a general interest will be impaired will not suffice. Arvida Corp. v. City of Boca Raton, supra.

It is also clear that rendering a judgment for either plaintiff or defendant in this action will not adversely affect appellants. If the regulation stands, appellants will continue to operate under a regulatory scheme that has been in existence in New York for many years. If the regulation is invalidated, appellants will be in a similar practical situation, that is, they can choose not to advertise. A judgment for plaintiffs would not force the appellants into any affirmative action. Where a proposed intervenor would not be affected by a disposition in favor of either plaintiff or defendant, no practical impairment is demonstrated and the court should deny intervention under Rule 24(a)(2). Norwalk CORE v. Norwalk Board of Education, 298 F. Supp. 208 (D.C. Conn. 1968).

POINT III

APPELLANTS INTERESTS ARE NOT INADEQUATELY REPRESENTED BY EXISTING PARTIES TO THIS LAWSUIT, WITHIN THE MEANING OF RULE 24 (a) (2).

Appellants raised the question of whether or not the 1966 amendment to Rule 24 (a) shifts the burden of persuasion on the issue of inadequacy of representation from the applicant to the opponents of intervention. While the commentations may disagree (see 7A Wright and Miller, Federal Practice and Procedures, Civil § 1909 at 521 (1972) and 3B Moore's Federal Practice § 24.09-1 at p. 24-291 (1974), this Circuit has spoken on the burden of establishing inadequacy of representation.

> To satisfy Rule 24 (a) (2), governing intervention of right, Allied (proposed intervenor) must also show (1) that it claims an interest in the insurance proceeds; (2) that, as a practical matter, that may be impaired by this suit; and (3) that Ionian (representative) will not provide adequate representation. Ionian Shipping Co. v. British Law Ins. Co., 426 F.2d 186 (2d Cir. 1970) (explanations added).

Ionian leaves no doubt that the burden of persuasion on inadequacy of representation lies squarely on the proposed intervenors. See also U.S. v. Board of School Commissioners, 466 F.2d 573, 575, cert. den., 410 U.S. 909 (1973). Appellants, here, have never made a factual showing of the inadequacy of representation by the State of New York. Granted the showing of inadequacy may not be stringent under the dicta In Trbovich V. UNWA, 404 U.S. 528, 538, n. 10 (1972), absent a showing that

representation may be inadequate, inadequacy will not be preserved. Kheel V. American S.S. Owners Mut. Protection and Indemn. Assn., 45 F.R.D. 281 (S.D.N.Y. 1968).

> The controlling rule is that representation is adequate if there is no collusion between the representative and an opposing party, if the representative does not have or represent an interest adverse to the applicant, and if that representative does not fail in the fulfillment of his duty. Stadin v. Union Electric Co., 309 F.2d 912, 912, cert. denied, 373 U.S. 915 (1963).

See also, U.S. v. Board of School Commissioners, supra, Hatton v. County Board of Education, 422 F.2d 457 (9th Cir. 1970), Peterson v. United States, 41 F.R.D. 131 (D. Minn. 1966), Moore v. Tangipahoa Parish School Board, 298 F. Supp. 288 (E.D. La. 1969). Specifically, the appellants have never demonstrated collusion, adverse interest or non-fulfillment of duty to defend on the part of the defendants herein.

Appellants arguments on adequacy of representation (starting at Appellants' Brief, 32) vis-a-vis their analysis of the interest protected by the regulation of the Regents herein (Appellants' Brief at 12) is internally inconsistent and forces appellants to make a crucial decision in the pursuit of intervention. Appellants contend that 8 N.Y.C.R.R. § 63.3(c) was promulgated by the defendant Regents for the "very purpose of shielding independent pharmacists from destructive...competition...." Appellants' Brief, 12. Yet the appellants later expect this Court to believe that the protector-defendants will not adequately defend an attack on the constitutionality of the regulation they themselves promulgated. Appellants insist that

the defendant Regents "appear here as defenders of the public interest, not that of pharmacists as a class." Appellants' Brief at 36.

Throughout Appellants' Brief a serious misconception has prevailed. This is particularly applicable in appellant's use of poetic license: "Should they succeed, the Board of Regents will indeed be freed of certain constraints upon its exercise of discretion in establishing pharmaceutical policy." Appellants' Brief at 20-22. This statement presupposes legislative enactment under which the Regents must labor. Such is not the case. Former New York Education Law § 6804 (1) (d) embodied those provisions of 8 N.Y.C.R.R. § 63.3 (c) now under attack. New York Education Law § 6804 (1) (d) was repealed, effective Sept. 1, 1971 (L.1971, ch. 987). The Regents promulgated 8 N.Y.C.R.R. § 63.3 (c) on May 4, 1972, effective June 1, 1972.

It, therefore, becomes clear that if this Court accepts the rationale offered in Urowsky v. Board of Regents, supra, the Regents does have "a quasi-fiduciary responsibility to the would-be intervenor." Appellants' Brief at 32. Appellees would hardily agree with appellants when they further concede: "As with other fiduciaries, there, the adequacy of its representation will be assumed until a clear showing to the contrary can be made." Appellants' Brief at 32. This Court should therefore apply the test enumerated in Stadin v. Union Electric Co., supra, and finding no collusion, adversity of interest or

neglect, it should find that the appellants are adequately represented by the Regents.

Should this Court rejects the rationale in Urowsky v. Board of Regents, supra, the appellant's interest, crucial to the first part of the test in Rule 24 (a), is no more than a general interest and not sufficient to allow them to intervene as of right.

(b) Argument concerning Permissive Intervention

POINT IV

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING PERMISSIVE INTERVENTION TO THE APPELLANTS.

A motion under Rule 24 (b) appeals to the sound discretion of the district court:

> "...In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

Appellees will not argue with the standard of review of discretionary action quoted by appellants from In Re Josephson, 218 F.2d 174 at 182 (1st Cir. 1954) (Appellants' Brief at 50), but it should be noted that as firm as the language appears there, other courts have made it clear that the discretion of a judge is not often warranted. Nuesse v. Camp, 385 F.2d 694 (D.C. Cir. 1967). Other courts have used such tests as: (a) "clearly contrary to reason and not justified by the evidence," Springfield Crusher, Inc. v. Transcontinental Insurance Company, 372 F.2d 125, 126 (3d Cir. 1967); or (b) "action which is arbitrary, fanciful or clearly unreasonable." United States v. McWilliams, 163 F.2d 695, 697 (D.C. Cir. 1947). Whatever wording is used, the exercise of discretion under Rule 24 (b) is "not reviewable unless clear abuse is shown." Allen Calculators, Inc. v. National Cash Register Co.,322 U.S. 137, 142 (1943). See also, Edmundson v. State of Nebraska ex. rel. Meyer, 383 F.2d 123 (8th Cir. 1967).

It is undoubted that Rule 24 (b) should be literally construed. Peterson v. United States, supra. But the rule "should be construed in accordance with its underlying purpose, which is the prevention of a multiplicity of lawsuits involving common questions of law or fact." Hurley v. Van Lare, 365 F. Supp. 186, 196 (S.D.N.Y. 1973). It is obvious that multiplicity of lawsuits is not at issue in this case.

Appellants have attempted to review a series of factors which may have been considered by the court below in its exercise of discretion. Appellants have also attempted to demonstrate conclusively that each of these factors is weighed heavily in favor of intervention.

The first factors are explicit in Rule 24 (b): will intervention cause delay or will it prejudice the adjudication of the rights of the original parties. Admittedly delay is always present when new parties enter a lawsuit, but an analysis of the reasons for delay evident in this case are evident. For whatever reasons, the proposed intervenors are committed to the retention of 8 N.Y.C.R.R. § 63.3 (c) and its prohibition on price advertising, however, they foresee a substantial First Amendment attack on that regulation. This is evidenced by the recent decision in Virginia Citizens Consumer Council v. State Board of Pharmacy, 373 F. Supp. 683 (E.D. Va. 1974), where a three judge court found that a prohibition on advertising of prescription drug prices was unconstitutionally violative of consumers First Amendment rights (the same argument in the instant case). Appellants, faced with

the proverbial "handwriting on the wall," are only aided by delay. In the face of this precedent, delay may be their only tactic.

It is also possible that obfuscating the issues at the trial level may be a tactic of the appellants. The "Ninth Defense" in the proposed answer is indicative of this approach. As plaintiffs' main contention is the First Amendment argument, the "Ninth Defense" is specious as it does not at all combat this attack. It is recognized that a state can regulate speech only in well-defined, limited areas. "These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words -- those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." Chaplinsky v. New Hampshire, 315 U.S. 568, 571-572 (1942). Appellants' additional arguments and "expertise" can add nothing to the determination of this issue, but could indeed add confusion to the proceedings on the merits, thus prejudicing the rights of the original parties. Such confusion, standing alone, is sufficient reason for a court to deny intervention under Rule 24 (b). Lipsett v. United States, 359 F.2d 956, 959 (2d. Cir. 1966), SEC v. Everest Management Corp., 475 F.2d. 1236, 1240 (2d. Cir. 1973).

Appellants claim that they have practical knowledge of the profession and therefore are indispensible to the case. If knowledge of the profession of pharmacy is necessary to the case, the state, in particular those components which regulate the profession of pharmacy, surely possess sufficient knowledge

to assist the court. Plaintiffs contend, however, that such "knowledge" is totally unnecessary to the court to deal with the First Amendment attack. Virginia Citizens Consumer Council v. State Board of Pharmacy, supra.

Appellants' role as amicus curiae is sufficient to apprise any court of the legal principles involved in the constitutional attacks herein made. It is not necessary to have appellants as parties to the action to have "the fullest possible discussion of the issues before striking down state legislation or regulation." Appellants' Brief at 55.

In conclusion, a review of some of appellants' relevant factors demonstrates that for any number of rational reasons the lower court in the exercise of its discretion could have denied intervention under Rule 24 (b). Thus, the discretion of that court cannot be overturned upon review.

CONCLUSION

The decision of the court below denying intervention to the appellants was proper and should be affirmed by this court.

Respectfully submitted,

DENNIS A. KAUFMAN
Attorney for Plaintiff-Appellees

C 321—Affidavit of Service of Papers by Mail.
Affirmation of Service by Mail on Reverse Side.

Index No. 74-2260

NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC. et al. *Plaintiff*

against

REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK, et al. *Defendant*

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

The unde signed being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at

780 Grand Concourse, Bronx, N.Y.

That on November 22 *1974 deponent served the annexed* BRIEF

on David Goldberg - 999 Central Ave., Woodmere, N.Y. 11598

attorney(s) for Regents

in this action at 999 Central Ave, Woodmere N.Y. 11598

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me Dec. 6, 1974

Barbara Walters

BARBARA WALTERS
Commissioner of Deeds
City of New York 2-1011
Certificate Filed in New York County
Commission Expires 9/1/75

Thomas W. Caulfield

The name signed must be printed beneath

Thomas W. Caulfield